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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,902	10/08/2003	John M. Cuckler	5490-000350	6373
27572 7590 10/16/2007 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EXAMINER SWIGER III, JAMES L	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 10/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/680,902	Applicant(s) CUCKLER ET AL.	
	Examiner James L. Swiger	Art Unit 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 26-28 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-16 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastian et al. (US 5,769,854) in view of Barnes (US Patent 5,496,324). Bastian et al. disclose a bone cutting instrument comprising a guide (32) that is removably attachable to bone and also having at least an axis and has first and second sides that has a lateral axis extending perpendicularly, an opening (80), wherein it is capable of lateral adjustment relative to the opening and is capable of being laterally affixed while in multiple planes along the track/rotation point. The opening is also substantially box-shaped (see end of mill portion 70), has a driven end (92), as well as a cutting portion (60). The position is capable of being perpendicular. The apparatus also has affixation pins (54), to secure the cutting guide in place (Col. 3, lines 31-35). Bastian et al. further teach a bone-attachment flange (40) that is substantially parallel to the

base with two guiding sides (see Fig. 5).

Bastian et al. disclose the claimed invention except for a mill that is specifically rotatable and slidable along the axis of the opening, and is considered to be able to move along a plurality of parallel planes. Barnes '324 disclose a milling apparatus that is rotatable and slidable along an opening (18) to facilitate the cutting of bone, making a more efficient and tailored cut. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of the combination of Bastian et al. and Barnes having at least a rotatable mill to better make a cut on the bone.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination Bastain et al. '854 and Barnes as applied to claim 2 above and in further view of Coleman (US 5,591,207). The combination of Bastian et al. and Barnes disclose the claimed invention except for a rod with a groove or truncated grooves to prevent lateral sliding, or a bore. Coleman discloses a device that teaches a rod (200) having truncated grooves (202) to allow the rod to be set at certain locations (see Col. 6, lines 60-67), and also a bore (136) capable of use in securing purposes (121; Col. 6, lines 5-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of the combination of Bastian et al. and Barnes having at least a rod with truncated grooves and a bore in view of Coleman to aid in fixation and placement of the mill in use of the device.

***Allowable Subject Matter***

Claims 5-16 are allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 1-4 and 26-28 have been considered but respectfully are not persuasive. It is held that in claim 1, the guide has a first and second sides with an axis extending therebetween, and where the axis is considered substantially perpendicular to the sides. In the combination of Bastian et al. and Barnes, Barnes teaches that the mill is capable of rotating along a longitudinal axis (see arrows near 24 in Fig. 1 and see Col. 3, lines 1-10), that allow the cutter to be oriented as needed. Barnes is able to pivot and rotate about its pins, and it moves via the guide structure, as the rotatable mill does for Bastian et al. Claim 1 requires that the mill rotates, as shown in Barnes. Also, the movement is able to be considered to move along a plurality of parallel planes relative to the opening.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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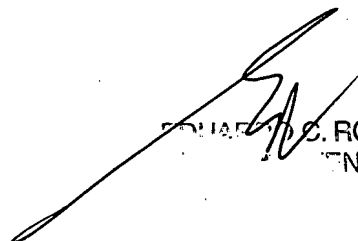
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 10/11/07

JLS

  
EDUARDO C. ROBERT  
PATENT EXAMINER